

Appl. No. 10/820,590
Docket No. 9031R
Amdt. dated January 26, 2010
Reply to Office Action mailed on October 26, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 1-3, 5-8, 10-12, 18-21, and 23-26 are pending in the present application. No additional claims fee is believed to be due.

Claims 17 and 22 are canceled without prejudice.

Claims 1 and 18 are amended. Support for the amendment to claim 1 is found, for example, in paragraph 31 of the published application. Claim 18 is amended to remove “substantially”.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §112, Second Paragraph

The Office Action States claims 17, 18, and 22 are rejected under 35 USC §112, second paragraph. Claims 17 and 18 are rejected for the use of “substantially” while claim 22 is rejected for use of “less than about.” Applicants traverse this rejection and respectfully request reconsideration.

While Applicants disagree with all these rejections, Applicants submit the rejection of claims 17 and 22 are moot as claims 17 and 22 are cancelled herein. Additionally, Applicants have removed “substantially” from claim 18 in hopes of advancing prosecution and submit the rejection of this claim is also now moot. Reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Godbey in view of Chang,
Sagel, and Xu

Claims 1-3, 5-8, 10-12, 17-26 were rejected under 35 USC §103(a) as being unpatentable over Godbey et al. (U.S. App. Pub. No. 2002/0187181) (Godbey) in view of Chang et al. (U.S. App. Pub. No. 2003/0194382) (Chang), Sagel et al. (U.S. Pat. No. 5,891,453) (Sagel), and Xu (U.S. App. Pub. No. 2002/0187111) (Xu). This rejection is traversed and reconsideration is respectfully requested.

Amended independent claim 1 recites a packaged tooth whitening product, comprising a backing layer and an adhesive layer of a tooth whitening composition comprising first and second polymers, from about 10% to about 90% water, and a tooth whitening agent, wherein said first polymer is polyethylene oxide having an average molecular weight between about 300,000 and about 900,000 and said second polymer is polyvinyl alcohol. The Office Action stated Godbey teaches lower molecular weights for the adhesive composition, but does not limit the polymers of the carrier layer. Going further, it stated when using polyethylene oxide in the carrier comprising a whitening agent, one of ordinary skill in the art would look to Xu to determine suitable molecular weights for use.

While this may or may not be true for a carrier layer, as stated in the Office Action, the teachings of Godbey with regard to the use of particular molecular weights in an adhesive layer are limited to lower molecular weights. Thus, Applicants contend that the teachings of Godbey and Xu as it relates to the molecular weight of polymers in the adhesive layer are adverse, not complimentary as the Office Action suggests. Godbey's statements relate the use of lower molecular weight polymers in its adhesive layer (less than 100,000 Daltons) to have a good balance of cohesive strength and water solubility. Additionally, since Godbey teaches limited molecular weights for the adhesive layer, but not for the carrier layer, Godbey teaches away from the use of polymers in its adhesive layer with a molecular weight greater than 100,000 Daltons. As Examiner is aware, it is error to find obviousness when a reference diverges from and teaches away from the invention at hand, *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988).

In light of the above, Applicants submit that claim 1 and those claims dependent thereon are nonobvious over Godbey in view of Chang, Sagel, and Xu. Reconsideration is respectfully requested.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

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Respectfully submitted,

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Date: January 26, 2010
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